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No. 91-1390

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

WEST FARMS ASSOCIATES,

Petitioner,

v.

STATE TRAFFIC COMMISSION OF THE STATE OF CONNECTICUT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT WILMORITE, INC.'S BRIEF IN OPPOSITION

JEFFREY J. MIRMAN*
TARLOW, LEVY, & DRONEY, P.C.
74 Batterson Park Road
Farmington, CT 06032
(203) 676-3000
Attorneys for Respondent Wilmorite, Inc.

*Counsel of Record

March 27, 1992

QUESTION PRESENTED

Whether the Court of Appeals' Decision that Petitioner failed to satisfactorily allege a property interest protected by the Fourteenth Amendment in the procedures identified in the Connecticut Environmental Protection Act (CEPA), CONN. GEN. STAT. §22a-19, permitting intervention in State administrative proceedings to raise environmental concerns, is in direct conflict with this Court's holding in *Hewitt v. Helms*, 459 U.S. 460 (1983), that the mandatory duties imposed upon Pennsylvania prison officials for the benefit of individual inmates created a liberty interest protected by the Due Process Clause.

PARTIES TO THE PROCEEDING

The petitioner is West Farms Associates, a Connecticut partnership, the plaintiff and appellant below. Respondents include the State Traffic Commission of the State of Connecticut, the Department of Transportation of the State of Connecticut, J. William Burns and Emil H. Frankel, Bernard R. Sullivan and Nicholas A. Cioffi, and Lawrence F. DelPonte and Louis S. Goldberg, individually and as members of the State Traffic Commission,[1] and Wilmorite, Inc., a New York corporation, the defendants and appellees below.

Pursuant to Rule 29.1 of the Supreme Court Rules, there are no parent or subsidiary companies, except wholly owned subsidiaries, of Respondent Wilmorite, Inc.

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[1] During the pendency of this action, Respondents Frankel, Cioffi and Goldberg replaced J. William Burns, Bernard R. Sullivan and Lawrence F. DelPonte, respectively.

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RESPONDENT WILMORITE, INC.'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Respondent Wilmorite, Inc. respectfully requests that this Court deny the petition of West Farms Associates for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion below of the Court of Appeals is reported at 951 F.2d 469. The judgment and opinion of the District Court for the District of Connecticut are unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 3, 1991. The Petitioner has asserted that jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1) (1988).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the Fourteenth Amendment to the United States Constitution and Section 22a-19 of the Connecticut General Statutes reproduced at page 34a of the Petitioner's petition, the First Amendment to the United States Constitution and Section 4-166, Section 4-183, Section 14-311 and Section 22a-16 of the Connecticut General Statutes -- CONN. GEN. STAT. §4-166, CONN. GEN STAT. §4-183, CONN. GEN. STAT. §14-311 and CONN. GEN. STAT. §22a-16 -- reproduced at Appendix A, pp. 1a-7a, *infra*, are involved in this matter.

STATEMENT OF THE CASE

Introduction

This case concerns the attempt by the Petitioner West Farms Associates, owner of West Farms Mall in West Hartford and Farmington, Connecticut, a one million square foot shopping mall, to impede or block the efforts of an economic competitor, Respondent Wilmorite, Inc. ("Wilmorite"), to develop a similarly sized shopping mall approximately six miles away in Plainville, Connecticut. In this case, Petitioner chose to intervene in the processing of Wilmorite's application for a certificate from the

Connecticut State Traffic Commission ("STC"), invoking intervention rights found in the Connecticut Environmental Protection Act ("CEPA"). Petitioner has complained about the way in which Wilmorite's application has been processed, notwithstanding that Petitioner initiated the same procedures in seeking, and obtaining, two certificates from the STC prior to the construction and later expansion of West Farms Mall.

The Petition Includes Non-Record Facts

The facts of this case are adequately outlined in the decision of the Court of Appeals. Petitioner, however, has sought to include in its Petition allegations of fact which were neither included within Petitioner's Amended Complaint nor included as part of the Record before either the District Court or the Court of Appeals. We will identify and respond to those non-Record factual allegations.[2]

At page 10, paragraph 6 of its Petition, West Farms discusses events which occurred at a special meeting of the STC held on September 5, 1991. Neither the District Court nor the Court of Appeals had before it any consideration of the events of this meeting or the resultant decision to issue the Certificate made by the STC.

In the same paragraph, and again at page 14, n. 9, West Farms alleges: "No evidence was introduced to refute

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[2] This Court has repeatedly held that it will not consider any evidence which is not contained within the Record below. *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972); *New Haven Inclusion Cases*, 399 U.S. 392, 450 n. 66 (1970); *Lawn v. U.S.*, 355 U.S. 339, 365 (1958).

or contradict West Farms [sic] verified pleadings." In fact, there was significant and substantial evidence in the record before the STC, provided to West Farms prior to the STC meeting of September 5, 1991, which rebutted or contradicted the allegations of environmental harm contained within West Farms' Verified Petition.[3]

At page 7 of its Petition, West Farms asserts that it petitioned to intervene in the STC's proceeding because it was concerned, *inter alia*, about "its own environmental and legal duties as a Certificate holder, traffic generator, and corporate citizen." In the same paragraph West Farms asserts that its "intervention petition noted the particularized environmental effects Wilmorite's proposal would have on West Farms itself." However, neither the Amended Complaint nor the intervention petition contained such information; rather, the Amended Complaint and the Intervention Petition included no more than statements of generalized fears.[4] The only particularized effects West

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[3] West Farms attached its Verified Petition to the Amended Complaint filed on or about July 25, 1990. All respondents filed motions, pursuant to F.R.C.P. 12(b)(6), to dismiss West Farms' Amended Complaint, and for purposes of the record in the District Court and the Court of Appeals the allegations of West Farms' Amended Complaint were deemed to be true.

[4] A number of courts have recognized that mere notice pleading, or conclusory allegations, are insufficient to state a claim under which relief can be granted under 42 U.S.C. §1983. *Albany Welfare Rights Org. Day Care Center, Inc. v. Schreck*, 463 F.2d 620, 623 (2d Cir. 1972) *cert. denied*, 410 U.S. 944 (1973); *Negrich v. Horn*, 379 F.2d 213, 215 (3d Cir. 1967); *Salahuddin v. Cuomo*, 861 F.2d 40 (2d Cir. 1988).

(continued...)

Farms noted were its concerns about lost income due to a decline in its gross sales.

The Statutory Framework

Pursuant to CONN. GEN. STAT. §14-311, persons seeking to build a shopping center generating large volumes of traffic which has an exit or entrance on or substantially affects state highway traffic must obtain a certificate from the STC that the operation will not imperil the safety of the public. CONN. GEN. STAT. §14-311(a). "In determining the advisability of such certification, the state traffic commission shall include, in its consideration, highway safety, the width and character of the highways affected, the density of traffic thereon and the character of such traffic." CONN. GEN. STAT. §14-311(d).

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[4](...continued)

Moreover, generalized fears do not give rise to specific personal or legal interests, and, as such, no property interest can be grounded on such generalized fears. *Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council*, 215 Conn. 474, 576 A.2d 510 (1990); *Walls v. Planning and Zoning Commission*, 176 Conn. 475, 408 A.2d 243 (1979); *Board of Regents v. Roth*, 408 U.S. 564 (1972).

ARGUMENT

Reasons Why The Court Should Deny West Farms' Petition For Certiorari

1. *The Decision of the Court of Appeals Is Not In Conflict With This Court's Decision In* ***Hewitt v. Helms.***

The Court of Appeals considered Petitioner's argument that *Hewitt v. Helms* mandated a different result and rejected that claim. As the Court of Appeals found:

> [U]nlike Section 22a-19(b), the statute at issue in *Hewitt* imposed mandatory duties on Pennsylvania prison officials for the benefit of individual inmates. The officials were thus required to follow certain guidelines before removing an inmate from the general prison population and placing that inmate in close or maximum administrative custody. Id. at 470 n.6. The Court held that the prison inmates had a liberty interest protected by the Due Process Clause as a result of this Pennsylvania statutory scheme. Id. at 471-72.
>
> Section 22a-19(b), as noted, neither specifies any particular action or non-action nor confers any individualized benefit. Although it accords intervenors the procedural right to be heard on the environmental effects of a development, the STC's decision is largely of a judgmental and discretionary nature.[5] Moreover,

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[5] Unlike *Hewitt*, CEPA's mandatory language is far more generalized; it merely requires the administration agency to consider all (continued...)

> the intended beneficiaries of Section 22a-19(b) are entirely generalized, including anyone who might encounter unreasonable environmental consequences as a result of the particular development. Such universal benefits are not property interests protected by the Due Process Clause. See, e.g., *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) (the hallmark of property, the Court has emphasized, is an *individual* entitlement grounded in state law.) (emphasis added).

951 F.2d at 472-473; (Petition, App. A, pp. 6a-7a).

Indeed, the Connecticut Supreme Court has specifically reserved for another day the issue of whether CEPA "would confer such property rights in the absence of a showing of any specific personal or legal interest in the subject matter of the proceedings at issue." *Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council*, 215 Conn. 474, 484, n. 5, 576 A.2d 510 (1990). Given that the Supreme Court of the State of Connecticut has not deemed the issue to be sufficiently important to require resolution, there is no reason why this Court should consider this issue, arising out of a state statute, sufficiently important to justify resolution now.

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[5](...continued)
relevant surrounding circumstances and factors before issuing the certificate. A careful procedural structure does not in and of itself create a protected liberty interest. 459 U.S. at 471. Moreover, the STC is vested with considerable discretion over whether to issue the Certificate at all; no such discretion was present in the administrative process in *Hewitt*.

Furthermore, as the Court of Appeals reasoned, CONN. GEN. STAT. §22a-19 does no more than provide an intervenor with an opportunity to present its views as to environmental impacts. 951 F.2d at 472 (Petition, App. A, p. 6a). Since the decision to issue a certificate lies within the STC's discretion, providing West Farms with an opportunity to be heard is nothing more than a procedural right. Id.[6]

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[6] *See also*, *Fusco v. State of Connecticut*, 815 F.2d 201 (2d Cir. 1987). *cert. denied* 484 U.S. 849 (1987); *BAM Historic District Association v. Koch*, 723 F.2d 233 (2d Cir. 1983).

Furthermore, the argument that West Farms has a protected property interest in the application process before the STC when the applicant itself (Wilmorite) has no such property interest makes no sense. Section 14-311 vests the STC with discretion as to whether or not to issue the certificate. Because there is no certainty an application will be granted, no property interest can be said to exist. *Yale Auto Parts v. Jones*, 758 F.2d 54 (2d Cir. 1985); *Dean Tarry Corp. v. Friedlander*, 826 F.2d 210 (2d Cir. 1987); *RRI Realty Corp., Inc. v. Village of South Hampton*, 870 F.2d 911 (2d Cir. 1989).

Thus, if any party can look for comfort in this Court's decision to accept certiorari in *PFZ Properties, Inc. v. Rodriguez*, 928 F.2d 28, 29-30 (1st. Cir.), *cert. granted in part*, ___ U.S. ___, 112 S.Ct. 414 (1991) it should be Wilmorite, and not West Farms. West Farms' reliance upon the granting of certiorari (Petition, p. 10, n.7; p. 20, n. 11) is misplaced. In *PFZ* this Court granted certiorari only as to the following question: "Whether an arbitrary, capricious or illegal denial of a construction permit to a developer by officials acting under color of state law can state a substantive due process claim under 42 U.S.C. §1983." While Wilmorite, as the developer of the Plainville Mall, might therefore have had substantive due process claims arising out of a denial by the STC of its application, this Court's resolution of *PFZ* can have no bearing on the claims advanced by West Farms. Accordingly, West Farms'

(continued...)

In any event, West Farms was awarded, and took, the opportunity to present its views. West Farms had no right to anything more. The First Amendment authorizes the STC to conduct business in private. *Madison Joint Sch. Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 175 n.8 (1979). Moreover, there is no constitutional requirement that government policymakers, including the members of the STC, listen or respond to these claims. *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 285 (1984); 951 F.2d at 473.

West Farms, however, has consistently attempted to transform the process by which the STC reviews applications under CONN. GEN. STAT. §14-311. Contrary to the assertion of West Farms before the District Court, the Court of Appeals, and here (Petition, p. 14), the mere intervention by a party under Section 22a-19 does not transform the administrative processing of an application into a contested case proceeding within the meaning of Section 4-166(2) of the Connecticut Administrative Procedure Act. The shifting of burdens (first to a plaintiff to demonstrate a *prima facie* case, then to defendants to produce evidence to the contrary or to show there are no reasonable alternatives) takes place, if at all, only in direct actions commenced in the Superior Court under Section 22a-16. In *Manchester Environmental Commission v. Stockton*, 184 Conn. 51, 441 A.2d 68 (1981), the Court evaluated claims made under Section 22a-16, and not under Section 22a-19. West Farms' reliance upon *Stockton* is, therefore, misplaced.

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[6](...continued)
request (Petition, p. 20) that this Court hold in abeyance a writ of certiorari pending resolution of *PFZ* should be denied.

An intervenor's standing under Section 22a-19 is limited to the claims already raised in the proceeding within the jurisdiction of the agency. *Middletown v. Hartford Electric Light Co.*, 192 Conn. 591, 597, 473 A.2d 787 (1984).

> [An intervenor] has a derivative role by virtue of an action already shaped by the original parties. He takes the controversy as he finds it and may not introduce his own claims to restyle the action.

Connecticut Water Co. v. Beausoleil, 204 Conn. 38, 48, 526 A.2d 1329 (1987).

Finally, the Court of Appeals concluded that the First Amendment does not require a right of access to the Courts so as to require the STC to keep a public record of any *ex parte* meetings. 951 F.2d at 474.

West Farms has not challenged any of these conclusions which rejected the very bases upon which West Farms contended in the courts below it was deprived of its property interests without due process. Thus, even if West Farms had some protected property interest, it has not seen fit to challenge the lower court's findings that, in effect, West Farms received all the process it was due.

2. *The Petition Seeks to Expand the Jurisdiction of the STC Beyond its Legislative Mandate.*

West Farms argues, at page 14 of its Petition, that the STC was precluded from disregarding West Farms' claim of environmental harm to the land at the site of the proposed roadway changes, the air pollution generated by 40,000 to 50,000 additional motor vehicle trips daily, and of the effect

of the proposed changes upon nearby wetlands. West Farms claims that the STC was obligated to assume as true the allegations of the petition until rebutted.

However, even assuming, *arguendo*, the truth of Petitioner's allegations, the STC was without jurisdiction to consider West Farms' claims. The Connecticut Supreme Court, in ruling upon the parameters of a state agency's authority under CONN. GEN. STAT. §22a-19, has specifically ruled that state agencies are not to be considered mini-environmental protection agencies, *Connecticut Fund for the Environment v. Stamford*, 192 Conn. 247, 470 A.2d 1214 (1984), and the powers of an agency are not expanded by CONN. GEN. STAT. §22a-19. *Beausoleil*, 204 Conn. at 38, 526 A.2d at 1329; *Middletown*, at 591, 473 A.2d at 787. Accordingly,

> ...invocation of the EPA is not an open-sesame for standing to raise environmental claims with regard to any and all environmental legislation. In *Connecticut Fund for the Environment, Inc. v. Stamford*, 192 Conn. 247, we held that Section 22a-19 of the EPA, which permits any person, on the filing of a verified pleading, to intervene in any administrative proceeding and to raise therein environmental issues must be read in connection with the legislation which defines the authority of the particular administrative agency. Section 22a-19 is not intended to expand the jurisdictional authority of an administrative body whenever an intervenor raises environmental issues. Thus, an inland-wetland agency is limited to considering environmental matters which impact on inland-wetlands. Other environmental impacts must be raised before other appropriate administrative

> bodies, if any, or in their absence, by the institution of an independent action pursuant to Section 22a-16.

Id. at 597, 473 A.2d at 787.

Under CONN. GEN. STAT. §14-311, the STC's responsibility is limited to

> highway safety, the width and character of the highways affected, the density of traffic thereon, the character of such traffic and the opinion and findings of the traffic authority of the municipality wherein the development is located.

CONN. GEN. STAT. §14-311(d). The STC's concern over environmental matters, then, is limited to the effects of the proposed roadway changes on the flow of traffic over those roadways. It is concerned with air pollution only insofar as such pollution would affect the flow of traffic. The STC is powerless to consider any alleged harm to the land at the site of the roadway changes, or to nearby wetlands, or to air pollution in general, all of which are unquestionably beyond the agency's expertise.[7] Under these circumstances, West Farms should have raised the issue of any environmental impacts in an independent action pursuant to CONN. GEN. STAT. Section 22a-16. *See Middletown*, 192 Conn. at 597, 473 A.2d at 787. That West Farms chose not to bring such an action suggests an inability by West Farms to demonstrate a *prima facie* case of unreasonable pollution,

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[7] It is, furthermore, not clear that the environmental effects to the land at the site of the proposed roadway changes would involve the "natural resources of the state." Cf. *Red Hill Coalition v. Town Plan and Zoning Commission*, 212 Conn. 727, 563 A.2d 1347 (1989).

and illustrates that its motives are not to protect the Public Trust, but its own economic interests.[8]

3. *The Petitioner Has State Court Judicial Remedies Available Which Have Been Invoked.*

This Court should also deny West Farms' Petition because alternative state court procedures are available to West Farms, in addition to the direct action provision of CONN. GEN. STAT. §22a-16. This Court may take judicial notice of West Farms' Appeal from the grant by the STC to Wilmorite of the Section 14-311 certificate bearing Docket No. CV910502822S(A90). *See generally*, *E.I. DuPont De Nemours & Co., Inc. v. Culich*, 791 F.2d 5, 7 (1st Cir. 1986) and cases cited therein. In its State Court Appeal, reproduced as Appendix B beginning at page 8a, *infra*, West Farms makes many of same allegations as set forth in its Amended Complaint to the District Court, including, *inter alia*,

a. that the STC failed to provide West Farms with procedures governing its intervention or participation in the Wilmorite application process (¶11);

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[8] West Farms' suggestion, at page 20, n. 10 "that the vigorous use of private sector values to protect public trust resources is precisely what §22a-19(b) of CEPA requires in order to further its purpose" is not supported by either case law or the legislative history. The purpose of the legislation is to prevent unreasonable pollution, not to protect West Farms' income derived from gross sales, which is why the Court of Appeals correctly concluded that the intended beneficiaries of §22a-19 are entirely generalized, and that the inability of West Farms to explain its particularized harm results in the absence of a protected property interest. 951 F.2d at 472-473. (Petition, App. A, pp. 6a-7a).

b. that the STC had *ex parte* communications with Wilmorite and others supportive of the application, discussing the feasibility of the application (¶12);

c. that the STC excluded West Farms from participating in the review process (¶14);

d. that the STC denied West Farms the opportunity to present testimony showing the claimed environmental harm from the Plaintiff Mall and the roadway improvements (¶22); and

e. that the STC's issuance of a certificate to Wilmorite violated due process, was made pursuant to unlawful procedures and contrary to statutory duty, because (1) West Farms was deprived of the opportunity to meaningfully participate, (2) of the inability to establish a record for adequate judicial review, (3) of the absence of substantive standards, and (4) of the *ex parte* contacts (¶31).

Thus, West Farms has raised in the State Court proceedings the same issues which it seeks to have this Court consider upon appeal. Inasmuch as West Farms makes no suggestion that the Connecticut courts cannot adequately protect West Farms' interests, there is no reason why this Court should consider these issues before the Connecticut courts have had an opportunity to resolve issues arising out of state law *Colorado River Conservation District v. United States*, 424 U.S. 800, 814 (1976). *Railroad Comm'n of Texas v. Pullman Company*, 312 U.S. 496, 501 (1941).

4. *West Farms Raises, For The First Time, A Claim That Invocation Of The Public Trust Doctrine Requires Federal Judicial Intervention.*

Ancillary to West Farms' argument that *Hewitt v. Heims* requires a conclusion that plaintiffs have a property interest by virtue of Section 22a-19 is West Farms' claim that the "Public Trust Doctrine" of CEPA also establishes a mandatory duty on the part of an administrative agency (Petition, p. 15, ¶6.8).[9] West Farms argues that the Court of Appeals overlooked the meaning or significance of the Public Trust Doctrine. West Farms further argues that the evolution of the doctrine under state law warrants review by this Court.

However, if the Court of Appeals overlooked the significance of the Public Trust Doctrine, it was because West Farms failed to bring the Doctrine to the Court's attention. West Farms argues, for the first time before this Court and without raising this claim below, that the Public Trust Doctrine imposes mandatory duties upon state agencies. In so arguing, West Farms incorrectly assumes that the Public Trust Doctrine has been universally applied and has the same meaning in Connecticut that it has in Michigan, California, or South Dakota. Moreover, as West Farms recognizes, the Public Trust Doctrine was traditionally applied only to tidal or navigable waters. Sax, *The Public Trust Doctrine and Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471, 556

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[9] Although West Farms has identified two questions presented, the text of the Petition reveals that the second question is merely ancillary to the first, which is why we identified only one question as being presented.

(1970). While it may be that the Connecticut legislature has expanded the doctrine beyond tidal or navigable waters, the terms "public trust" and "other natural resources" have not been defined or interpreted, either in CEPA's legislative history or by judicial interpretation. *See generally*, Note, *Public Trust, Farmland Protection, and the Connecticut Environmental Protection Act: Red Hill Coalition, Inc. v. Town Plan & Zone Commission*, 23 Conn. L. Rev. 811, 818 (1991). Furthermore, as we have indicated previously, an intervenor in an administrative proceeding under CONN. GEN. STAT §22a-19 is not permitted to expand the scope of either the jurisdiction of the agency involved in the proceeding or the issues existing in that proceeding at the time of intervention. *Middletown*, 192 Conn. at 597, 473 A.2d at 787; *Connecticut Fund*, 192 Conn. at 247, 470 A.2d at 1214.

West Farms' argument that because CEPA confers standing to sue under CONN. GEN. STAT. §22a-16[10], it must be considered to have some "individualized benefits", or a distinct injury. Again, even assuming, *arguendo*, this to be true, Connecticut courts have specifically held that §22a-19 does not confer upon intervenors in administrative proceedings the right to appeal decisions of administrative agencies, in the absence of some independent statutory provisions authorizing such appeals. *See, e.g., Doyle v. The Commissioner of Environmental Protection*, 3 Conn. L. Rptr. 603, 605 (Sup. Ct. 1991). The Connecticut Supreme Court has not ruled on the issue of whether §22a-19 creates a right of appeal under the Connecticut Administrative

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[10] Of course, "standing is not a matter of constitutional law in Connecticut..." *Stockton*, 184 Conn. at 65.

Procedure Act in the absence of an independent statutory right of appeal.

The interpretation of the requirements for provisions of state law are best decided by state courts, particularly where, as here, state law questions bearing on policy problems of substantial public import at issue. *Colorado River Conservation District*, 424, at 814. West Farms has access to expeditious and adequate state court review of its claims. Therefore, this Court should abstain from interpreting the state statutory scheme. Id.

5. *The Decision Of The Court Of Appeals Was Correct For Other Reasons.*

As the District Court held, Wilmorite is a private party. The District Court further held that West Farms' Amended Complaint did not allege Wilmorite to have so intertwined itself with the STC so as to become indistinguishable from the STC or that in participating in the CONN. GEN. STAT §14-311 application process Wilmorite assumed responsibilities reserved for the STC and State Officials. The District Court, relying, *inter alia*, upon this Court's holding in *NCAA v. Tarkanian*, 488 U.S. 179, 191 (1983), concluded that Wilmorite's conduct did not constitute state action, and granted Wilmorite's Motion To Dismiss (Petition, p. 20a).

The Court of Appeals concluded it did not need to address this issue (Petition, p. 10a). Nevertheless, the analysis of the District Court was sound, and would have provided ample basis for the Court of Appeals to affirm.

CONCLUSION

For all these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Jeffrey J. Mirman, Esq.
Counsel of Record
TARLOW, LEVY & DRONEY, P.C.
74 Batterson Park Road
P.O. Box 887
Farmington, CT 06034
(203) 676-3000

Counsel for Respondent
Wilmorite, Inc.

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APPENDIX

APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. Section 14-311 of the Connecticut General Statutes provides:

§14-311. **Open air theaters, shopping centers and certain other developments affecting state highway traffic**

(a) No person, firm, corporation, state agency, or municipal agency or combination thereof shall build, expand, establish or operate any open air theater, shopping center or other development generating large volumes of traffic, having an exit or entrance on, or abutting or adjoining, any state highway or substantially affecting state highway traffic within this state until such person or agency has procured from the state traffic commission a certificate that the operation thereof will not imperil the safety of the public.

(b) No local building official shall issue a building or foundation permit to any person, firm, corporation, state

agency or municipal agency to build, expand, establish or operate such a development until the person, firm, corporation or agency provides to such official a copy of the certificate issued under this section by the commission. If the commission determines that any person, firm, corporation or state or municipal agency has (1) started building, expanding, establishing or operating such a development without first obtaining a certificate from the commission or (2) has failed to comply with the conditions of such a certificate, it shall order the person, firm, corporation or agency to (A) cease constructing, expanding, establishing or operating the development or (B) comply with the conditions of the certificate within a reasonable period of time. If such person, firm, corporation or agency fails to (i) cease work or (ii) comply with an order of the commission within such time as specified by the commission, the commission may make an application to the superior court for the judicial district of Hartford-New Britain or the judicial district where the development is located enjoining the construction, expansion, establishment or operation of such development.

(c) The state traffic commission shall issue its decision on an application for a certificate under subsection (a) of this section not later than one hundred twenty days after it is filed, except that, if the commission needs additional information from the applicant, it shall notify the applicant in writing as to what information is required and (2) the commission may toll the running of such one-hundred-twenty-day period by the number of days between and including the date such notice is received by the applicant and the date the additional information is received by the commission and (2) if the commission receives the additional information during the last ten days of the one-hundred-twenty-day period and needs additional

time to review and analyze such information, it may extend such period by not more than fifteen days. The state traffic commission may also, at its discretion, postpone action on any application submitted pursuant to this section or section 14-311a until such time as it is shown that an application has been filed with and approved by the municipal planning and zoning agency or other responsible municipal agency.

(d) In determining the advisability of such certification, the state traffic commission shall include, in its consideration, highway safety, the width and character of the highways affected, the density of traffic thereon, the character of such traffic and the opinion and findings of the traffic authority of the municipality wherein the development is located. If the state traffic commission determines that traffic signals, pavement markings, channelization, pavement widening or other changes or traffic control devices are required to handle traffic safely and efficiently, one hundred percent of the cost thereof shall be borne by the person building, establishing or operating such open air theater, shopping center or other development generating large volumes of traffic, except that such cost shall not be borne by any municipal agency. The commissioner of transportation may issue a permit to said person to construct or install the changes required by the state traffic commission.

(e) Any person aggrieved by any decision of the state traffic commission hereunder may appeal therefrom in accordance with the provisions of section 4-183, except venue for such appeal shall be in the judicial district in which it is proposed to operate such establishment. The provisions of this section except insofar as such provisions relate to expansion shall not apply to any open air theater,

shopping center or other development generating large volumes of traffic in operation on July 1, 1967.

3. Section 22a-16 of the Connecticut General Statutes provides:

§22a-16 **Action for declaratory and equitable relief against unreasonable pollution**

The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the superior court for the judicial district wherein the defendant is located, resides or conducts business, except that where the state is the defendant, such action s hall be brought in the judicial district of Hartford-New Britain, for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity, acting alone, or in combination with others, for the protection of he public trust of the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction.

4. Section 4-183 of the Connecticut Administrative Procedure Act provides, in pertinent part:

§4-183. **Appeal to superior court**

(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the superior court as

provided in this section. The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal.

(b) A person may appeal a preliminary, procedural or intermediate agency action or ruling to the superior court if (1) it appears likely that the person will otherwise qualify under this chapter to appeal from the final agency action or ruling and (2) postponement of the appeal would result in an inadequate remedy.

. . .

(g) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the agency shall transcribe any portion of the record that has not been transcribed and transmit to the reviewing court the original or a certified copy of the entire record of the proceeding appealed from, which shall include the agency's findings of fact and conclusions of law, separately stated. By stipulation of all parties to such appeal proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(h) If, before the date set for hearing on the merits or an appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The

agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(i) The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the agency are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(j) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.

(1988), P.A. 88-230, § 1; 1988, P.A. 88-317, § 23, eff. July 1, 1989; 1990, P.A. 90-98, § 1.)

5. Section 4-166 of the Connecticut Administrative Procedure Act provides, in pertinent part:

§4-166 **Definitions**

. . .

(2) "Contested case" means a proceeding, including but not restricted to rate-making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required by statute to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held, but does not include proceedings on a petition for a declaratory ruling under section 4-176, or hearings referred to in section 4-168;

(3) "Final decision" means (A) the agency determination in a contested case, (B) a declaratory ruling issued by an agency pursuant to section 4-176, or (C) an agency decision made after reconsideration. The term does not include a preliminary or intermediate ruling or order of an agency, or a ruling of an agency granting or denying a petition for reconsideration;

. . .

APPENDIX B

RETURN DATE: Nov. 19, 1991	:	SUPERIOR COURT
WEST FARMS ASSOCIATES	:	JUDICIAL DISTRICT
VS.	:	OF HARTFORD/ NEW BRITAIN
CONNECTICUT STATE TRAFFIC COMMISSION	:	AT HARTFORD
and WILMORITE, INC.,	:	OCTOBER 15, 1991

TO ANY PROPER OFFICER, GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT you are hereby commanded to summon the State Traffic Commission of the State of Connecticut, 24 Wolcott Hill Road, Wethersfield, Connecticut and Wilmorite, Inc., 1265 Scottsville Road, Rochester, New York to appear before the Superior Court within and for the Judicial District of Hartford/New Britain at Hartford on the third Tuesday of November, 1991, the appearance not to be in person but to be made by State Traffic Commission and Wilmorite, Inc. or its attorney by filing a written statement of appearance with the Clerk of the Court whose address is 95 Washington Street, Hartford, Connecticut 06106 on or before the second day following the return date then and there to answer unto West Farms Associates of 200 East Long Lake, Bloomfield Hills, Michigan in an administrative appeal by serving upon the State Traffic Commission and Wilmorite, Inc. a true and attested copy of this citation and the administrative appeal in the manner prescribed by law.

Maria M. Kowal, 55 Whitney Avenue, New Haven, Connecticut 06510, is recognized in a sufficient amount of $250.00 to prosecute, etc.

HEREOF FAIL NOT but due service return and make.

DATED at New Haven, Connecticut this day of October, 1991.

JAMES J. PERITO
Commissioner of the Superior Court

NEIL T. PROTO
Commissioner of the Superior Court

Please enter the appearance of
Susman, Duffy & Segaloff, P.C.
55 Whitney Avenue, p. 0. Box 1684
New Haven, Connecticut 06507
624-9830
Juris #62505

Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D. C. 20005
(202) 371-6196
Juris #306055

for the plaintiff in this action

RETURN DATE: Nov. 19, 1991	:	SUPERIOR COURT
WEST FARMS ASSOCIATES	:	JUDICIAL DISTRICT
VS.	:	OF HARTFORD/ NEW BRITAIN
CONNECTICUT STATE TRAFFIC COMMISSION	:	AT HARTFORD
and WILMORITE, INC.,	:	OCTOBER 15, 1991

APPEAL FROM FINAL DECISION OF THE CONNECTICUT STATE TRAFFIC COMMISSION

TO THE SUPERIOR COURT for the Judicial District of Hartford/New Britain at Hartford to be held on the third Tuesday of November, 1991 comes the plaintiff West Farms Associates ("West Farms") appealing the decision of the Connecticut State Traffic Commission (the "STC") dated September 5, 1991 to issue Wilmorite, Inc. ("Wilmorite") a traffic certificate pursuant to Conn. Gen. Stat. Section 14-311 for the construction of the proposed Plainville Mall (the "Plainville Mall") and complains and says:

A. Parties

1. Plaintiff West Farms is a partnership organized under the laws of the State of Connecticut. West Farms owns the West Farm Malls, a one million square foot regional shopping mall located on a boundary line between West Hartford, Connecticut and Farmington, Connecticut adjacent to Interstate 84 ("I-84").

2. Defendant STC is a state agency located within the Connecticut State Department of Transportation. The

STC is composed of the Commissioners of the Connecticut State Departments of Transportation, Safety and Motor Vehicles. The STC is responsible for the issuance of certificates to shopping centers and other developments pursuant to Conn. Gen. Stat. Sec. 14-311 et seq.

3. Defendant Wilmorite is a New York corporation located at 1265 Scottsville Road, Rochester, New York.

B. Jurisdiction

4. This appeal is brought pursuant to Conn. Gen. Stat. Sec. 14-311(e) which provides that an aggrieved person may appeal from a decision of the STC and pursuant to the Connecticut Administrative Procedures Act, Conn. Gen. Stat. Sec. 4-183.

C. The STC Proceeding

5. On or about March 27, 1989, Wilmorite submitted its application and related materials to the STC relating to its proposed construction of the Plainville Mall ("Wilmorite Application"). Wilmorite proposed to build a 1.3 million square feet mall, one of the largest shopping malls in Connecticut, adjacent to the I-84 and the Route 72 corridor in Plainville, approximately 6 miles from the West Farms Mall.

6. To accommodate the substantial increases in traffic which the Plainville Mall will generate, the Wilmorite application proposed significant roadway changes to road proximate to I-84, Route 72, Route 10 and Route 372 (New Britain Avenue), including the construction of new on and off ramps to Route 72.

7. On December 1, 1989, West Farms submitted its "Verified Petition for Designation as a Party and Notice of Intervention" in Wilmorite's application review, STC No. 109-8903-01, ("Petition") pursuant to the Shopping Centers Traffic Act, Conn. Gen. Stat. S+c. 14 311, the Connecticut Environmental Protection Act, Conn. Gen. Stat. Sec. 22a-19, and various other statutory and regulatory provisions.

8. In its Petition, West Farms identified its purpose, interests and location within the same trade area as Wilmorite's proposed mall; set forth the various direct, indirect and cumulative environmental, land-use, traffic, and safety consequences that Wilmorite's proposal will generate at the site, in the region, along the I-84/Route 72 corridor, and with respect to West Farms; described the STC's procedural deficiencies and the absence of substantive environmental and safety standards; requested notice of all meetings and hearings that are held in connection with the STC proceedings; and requested all information at the STC and Connecticut Department of Transportation on Wilmorite's Application.

9. Without notice to West Farms and without any opportunity for West Farms to present testimony in support of its Petition or to answer any questions about West Farms' interests, position or viewpoint, the STC convened a meeting on December 19, 1989 to consider West Farms' Petition.

10. Thereafter, by letter dated January 11, 1990, the STC informed West Farms that its Petition was granted under the Connecticut Environmental Protection Act, Conn. Gen. Stat. Sec. 22a-19(a) "solely for the purpose of raising

environmental issues relevant to the issuance of a certificate under Section 14-311 of the General Statutes."

11. The STC, which has no rules and regulations defining the rights and duties of intervenors, did not provide West Farms with any procedures governing its intervention or its participation in the Wilmorite Application process.

12. During the course of the consideration of Wilmorite's application, the STC held numerous ex parte communications with Wilmorite, its consultants, its lawyers and representatives from the Town of Plainville who were supportive of Wilmorite's application. Upon information and belief, these ex parte communications included discussions and the making by the STC of decisions concerning the methodology used by Wilmorite to determine traffic increases and characteristics, safety risks, modifications and the feasibility of the Wilmorite Application, including proposed roadway changes.

13. The STC has no rules or regulations governing such ex parte communications; nor does the STC have any means for making such ex parte communications part of the public or judicial record.

14. Although Conn. Gen. Stat. Sec. @4-311 requires the STC to issue its decision on an application for a traffic certificate within 120 days after such application is filed, the STC engaged in its review of the Wilmorite Application, including a decision-making process with Wilmorite, for over two years before it formally initiated the statutorily mandated 120 day decision making period. The STC excluded West Farms from participation in the review process.

15. On January 17, 1990, West Farms submitted comments regarding the Wilmorite Application. Because of the absence of regulations governing the procedure for the submission of information by an intervenor to the STC, West Farms was unable to ascertain the nature or status of the STC's review of Wilmorite's application and to address the subject of the STC review. As a consequence, West Farms was chastised by the STC chairperson for providing an irrelevant and untimely submission.

16. On August 23, 1991, the STC issued a written notice of its intention to meet on September 5, 1991 to consider the Wilmorite Application. Such notice failed to describe the nature of the September 5, 1991 proceeding, the information that would be considered by the STC at its September 5, 1991 proceeding, the availability of such information to intervenors, such as West Farms, and to members of the public, and the nature of the action that the STC was considering taking on the Wilmorite Application.

17. West Farms was unable to prepare adequately for the September 5, 1991 proceeding on the Wilmorite Application because of the lack of adequate notice. West Farms requested that the STC postpone the September 5, 1990 proceeding. West Farms' request was denied.

18. On August 28, 1991, the Office of Traffic Engineer, Bureau of Highways of the State of Connecticut, prepared a "Traffic Investigation Report to the State Traffic Commission, recommending the granting of a traffic certificate to Wilmorite for the proposed plan for the Plainville Mall ("the Traffic Report"). The Traffic Report recommended that the traffic certificate granted to

Wilmorite be conditioned on Wilmorite's compliance with 17 conditions including, but not limited to,

(a) Wilmorite obtain an encroachment permit from the State Department of Transportation ("DOT") (Condition #1). Wilmorite can only obtain such encroachment permit if the United States Department of Transportation's Federal Highway Administration ("FHWA") approves the changes proposed by Wilmorite to the Federal Highway pursuant to 23 U.S.C. § 111. The STC has no authority over the approval process of the DOT or the FHWA.

(b) Wilmorite obtain four design waivers from the DOT design waiver committee (Condition #5). These design waivers concern waivers of safety requirements for sight lines, the width and the distance between an exit ramp and a driveway for a neighboring shopping plaza. The Traffic Report noted that "the feasibility of constructing the proposed roadway improvements depends on obtaining these design waivers." The STC has no authority over the approval process of the DOT Design Waiver Committee.

(c) Wilmorite obtain approval from the DOT for breaks in non access line on Route 72 and Route 10. (Condition #6). The Traffic Report stated that "approval of these breaks in lines would be required to construct the [roadway] and "the recommended roadway improvements are essential to the safe operation of the mall." The STC has no authority over DOT's approval process for breaks-in-lines of state highways.

(d) Wilmorite receive approval from the DOT for a computer control coordination system to control

traffic signals on Route 372 from Route 10 to Crooked Street and Crooked Street from Route 372 to Woodward Avenue/White Oak Avenue (Condition #7). The STC has no control over the approval by DOT of computer control coordination systems.

19. The Traffic Report noted that the plan submitted by Wilmorite for roadway improvement "will need to undergo further review by DOT before construction plans are finalized."

20. The Traffic Report also included an analysis of the traffic volumes and traffic patterns that would be generated by the Plainville Mall. The information in the Traffic Report indicated that at the intersections of Washington Street and Route 72 and Routes 10 and 371, traffic generated by the Plainville Mall would cause conditions to deteriorate to Level E service, especially during "peak" hours for the operation of the Plainville Mall. Level E service is a condition which exceeds the capacity of a roadway to handle such traffic.

21. Subsequent to August 28, 1991 and continuing until September 3, 1990, Wilmorite submitted additional plans and information concerning the Wilmorite Application.

22. On September 5, 1991, the STC held a meeting to consider the Wilmorite Application. At the meeting, two staff members from the DOT testified, the Senior Vice President of Wilmorite Corporation and Wilmorite's traffic engineer presented testimony in support of the Wilmorite Application, and West Farms offered testimony about the adverse traffic safety impact of the Plainville Mall. However, the STC denied West Farms the opportunity to

present expert testimony about the environmental harm that would result from the Plainville Mall and the roadway improvements, including testimony about the noise and air pollution and degradation and destruction of wetlands that the Plainville Mall and the roadway changes would create.

23. At the conclusion of the September 15, 1991 meeting, the STC approved the issuance of traffic certificate No. 109-8903-01 to Wilmorite for the Plainville Mall with the conditions recommended in the Traffic Report. The STC issued no opinion, decision or explanation of its reasons for such approval.

D. Aggrievement

24. West Farms is statutorily aggrieved by the STC's granting of a Traffic Certificate to Wilmorite for the Plainville Mall. On January 11, 1990, the STC granted West Farms' verified petition to intervene in the proceedings regarding Wilmorite's application for a Traffic Certificate for the Plainville Mall.

25. West Farms holds two certificates from the STC with respect to the West Farms Mall. In July 1972, the STC granted West Farms a certificate, under Section 14-311, allowing West Farms to construct and operate the West Farms Mall. Another STC certificate was granted to West Farms for an expansion of the West Farms Mall in 1982. Under both certificates, West Farms remains subject to the STC's continuing jurisdiction, including, but not limited to, the STC's right to revoke the certificate or to implement additional controls at West Farms' expense.

26. As an STC certificate holder, West Farms is aggrieved by the STC's granting of a Traffic Certificate to

Wilmorite for the Plainville Mall because the benefits conferred by such certificate diminish the value of West Farms' certificates and may impose additional obligations under West Farms certificates.

27. West Farms Mall also employs approximately 2400 to 3800 people, many of whom live in the greater West Hartford Central Connecticut Region, including Plainville, and use I-84 and Route 72 (southwest of the West Farms Mall) to travel to work.

28. Approximately 13 million people patronize West Farms Mall yearly, many of whom live in the vicinity of the proposed Plainville Mall or otherwise require access to West Farms Mall by I-84, Route 72 and other local road ways. The proposed Plainville Mall is within the West Farm Mall trade area.

29. West Farms derives income from the rentals in the West Farms Mall. This rental income is effected by gross rental sales generated by each tenant of the West Farms Mall. Such gross sale are directly affected by the ease and safety of access to West Farms Mall by patrons and employees and by the thoroughness and environmental soundness of highway planning.

30. West Farms is aggrieved by the STC's granting of a Traffic Certificate to Wilmorite for the Plainville Mall because the construction and operation of the Plainville Mall and the roadway changes authorized by the STC will cause traffic congestion, noise pollution, air pollution, dangerous roadway conditions, disruption of existing traffic patterns and an enormous increase in vehicular traffic on or adjacent to I-84 and Route 72 and other local roadways which are proximate to the West Farms Mall. Such traffic

congestion, pollution and unsafe conditions will adversely affect the comfort, health and safety of West Farms, employees and the patrons of the West Farms Mall, which will in turn adversely affect the gross rental sales generated by West Farms Mall and the rental and other income of West Farms.

31. The STC's issuance of a traffic certificate to Wilmorite for the construction of the Plainville Mall was in violation of fundamental notions of due process; made pursuant to unlawful procedures; and contrary to statutory duty; in that:

(a) The absence of any procedural regulations for the review and determination of Applications for traffic certificates, such as the Wilmorite Application, including the lack of any rules governing the submission of information, notice of proceedings, right to access to information considered by the STC, rights to present evidence, right to subpoena evidence, rights to cross-examine witnesses, the transcription or recording of STC proceedings, and the form of the decision that is rendered on a traffic certificate applications, deprived West Farms of the opportunity to participate meaningfully in the STC proceedings on the Wilmorite Application and to insure that an adequate administrative record was compiled for judicial review and resulted in the issuance of a traffic certificate to Wilmorite in violation of the Connecticut Administrative Procedures Act, Conn. Gen. Stat. Sec. 4-167, 4-177, 4-178, and 4-179; and Conn. Gen. Stat. Sec. 14-311(e).

(b) The absence of any substantive standards for evaluating whether a development or shopping center will "imperil" the "public safety" under Conn. Gen. Stat. Sec.

14-311 resulted in the issuance of a traffic certificate in violation of Conn. Gen. Stat. Sec. 14-311.

(c) The STC's ex parte meetings, discussions, telephone communications and decision-making with Wilmorite and other supporters, to the exclusion of an intervenor, West Farms, resulted in the issuance of traffic certificate to Wilmorite in violation of Conn. Gen. Stat. Secs. 4-177 and 4-181.

32. In reaching its decision and granting the traffic certificate to Wilmorite, the STC acted arbitrarily, capriciously, in abuse of the discretion vested in that body by law, and clearly erroneously in view of the substantial evidence on the record as a whole, in that:

(a) The STC conditioned the issuance of the traffic certificate to Wilmorite for the Plainville Mall on the condition that Wilmorite obtain permits and approvals from agencies over which the STC has no control. Specifically, the STC required Wilmorite to obtain (i) an encroachment permit from DOT, which encroachment permit is dependent upon obtaining a permit from the FHWA; (ii) design waivers from DOT; (iii) approval from DOT for breaks in non-access lines; and (iv) approval from DOT for a computer controlled signalization system was an abuse of discretion. The STC acted arbitrarily and unlawfully in issuing Wilmorite a traffic certificate prior to Wilmorite obtaining all of the approvals from other agencies which are necessary for the lawful issuance of a traffic certificate to Wilmorite.

(b) The STC's decision that the Plainville Mall would not imperil the public safety under Conn. Gen. Stat. Sec. 14-311 was clearly erroneous and not supported by

substantial evidence in light of the uncontradicted evidence before the STC that: (i) Wilmorite had provided the STC only with preliminary drawings of the roadway changes that it intended to make to accommodate the additional traffic that the Plainville Mall will generate; (ii) the Traffic Report indicated that further review of Wilmorite's plans for roadway improvements was necessary; (iii) the Plainville Mall will generate traffic which will cause significant traffic safety problem at various intersections in the vicinity of the Plainville Mall and the adjacent roadways; (iv) the proposed roadway changes to accommodate the Plainville Mall did not comply with at last four DOT safety design standards and there was no evidence that the public safety would be protected if such design standards were waived; and (v) the STC confined its review to traffic rather than public safety.

WHEREFORE, West Farms prays for the following relief:

1. That the appeal be sustained;

2. That judgment be entered reversing the action of the STC;

3. That the plaintiff West Farms be awarded costs in this action; and

4. That the Court award such other and further relief as may be available under law.

Dated in New Haven this ___ day of October, 1991.

THE PLAINTIFF

RETURN DATE: Nov. 19, 1991	:	SUPERIOR COURT
WEST FARMS ASSOCIATES	:	JUDICIAL DISTRICT
VS.	:	OF HARTFORD/ NEW BRITAIN
CONNECTICUT STATE TRAFFIC COMMISSION	:	AT HARTFORD
and WILMORITE, INC.,	:	OCTOBER 15, 1991

RECOGNIZANCE WITH SURETY

You, Tony Ness, Corporate Vice President of the Taubman Company, the Managing Agent for West Farms Associates, a partnership owning property known as the West Farms Mall, located at the juncture of Route 71 (New Britain Avenue) and I-84 (Exit 40) on the boundary line between West Hartford, Connecticut and Farmington, Connecticut, as principal, and Maria M. Kowal, 55 Whitney Avenue, 6 Floor, New Haven, Connecticut 06510, a surety, acknowledge yourselves jointly and severally bound to the State Traffic Commission in recognizance of $250.00, that the principal shall prosecute to effect the appeal which it has taken against the State Traffic Commission to the Superior Court in and for the Judicial District of Hartford/New Britain at Hartford, Hartford, Connecticut on the Third Tuesday of November, 1991 and that the

principal shall comply with the orders and decrees of said Court and that the principal shall pay any costs for which judgment may be rendered against them.

PRINCIPAL
WEST FARMS ASSOCIATES
BY THE TAUBMAN COMPANY, INC.
MANAGING AGENT

By:_____

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this day of October, 1991, by

_____

STATE OF CONNECTICUT)
) ss:
COUNTY OF NEW HAVEN)

The foregoing instrument was acknowledged before me this ____ day of October, 1991, by Maria Kowal, Surety.

_____